

**IN THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WASTE MANAGEMENT COUNCIL
NO. 05-09 WMC**

RECEIVED

SEP 21 2005

**REGENESIS CORPORATION
1994 Maple Street
West Hopkinton, NH 03229**

**Re: Solid Waste Permit No. DES-SW-SP-002
Bio Energy Solid Waste Facility
West Hopkinton**

**Appeal from Decision on
Proposed Revocation of
Solid Waste Permit,
No. 04-010**

**MOTION BY REGENESIS CORPORATION
FOR INTERLOCUTORY TRANSFER WITHOUT RULING
TO THE SUPREME COURT**

Regenesis Corporation ("Regenesis") respectfully moves that this appeal and all related appeals be transferred without ruling to the New Hampshire Supreme Court, saying:

1. Supreme Court Rule 9 permits an administrative agency to transfer questions of law without ruling to the Supreme Court, which then has discretion to accept or decline the transfer.
2. On April 18, 19, and 20, 2005, the parties below participated in a full-blown evidentiary hearing before DES Assistant Commissioner Michael Walls. Seven witnesses testified; counsel representing 5 parties, including 3 intervenors, participated in questioning and argument; hundreds of pages of exhibits were submitted; and Hearings Officer Walls rendered a 92-page decision. In addition, a stenographer was present and transcripts have already been prepared.
3. For this elaborate procedure to be re-enacted before this Council would be not only unnecessary, but a terrible waste of the State's and the parties' time and money.

4. The normal path for a dispute is an evidentiary hearing followed by an appeal of legal issues to a higher authority.

5. Although there is no question that this Council has the power to render a judgment on the legal issues that have been raised on appeal here, the reality is that, whatever this Council decides, it is virtually certain that the Council's decision will be appealed by one or more parties, and thus virtually certain that the Supreme Court will be the final decision-maker on all of these legal issues.

6. Given this reality, the most practical, cost-effective, and time-saving course is for all legal issues raised here on appeal to be transferred immediately to the Supreme Court without any ruling by this Council.

7. Not only is this the most practical course, but it is one that is in full accord with the letter and spirit of the New Hampshire Constitution, which gives every person a right to legal remedies "promptly and without delay; conformably to the laws." N.H. Const., Pt. 1, Art. 14.

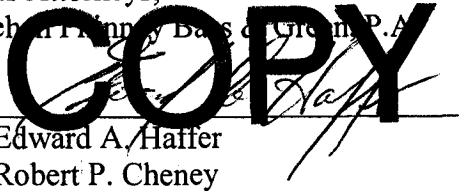
8. Senior Assistant Attorney General Jennifer Patterson assents on behalf of the State to the granting of this Motion. Counsel for the two Intervenors appealing, REACH and CFNH, do not assent.

WHEREFORE, Regensis respectfully requests the following relief:

- A. An Order granting this Motion.
- B. An Order granting such other relief as is just.

Respectfully submitted,
REGENESIS CORPORATION,
By its Attorneys,
Sheehan Pappas & Green, P.A.

Dated: September 21, 2005

By: 
Edward A. Haffer
Robert P. Cheney
John-Mark Turner
1000 Elm Street
P.O. Box 3701
Manchester, NH 03105-3701
T: 603-627-8115
F: 603-641-2352
E: ehaffer@sheehan.com

CERTIFICATE OF SERVICE

I certify that copies of the foregoing were sent this date by mail to the attached Service List, and by email to all persons on that list except Messrs. Nolin and Giuffrè.


Edward A. Haffer

SERVICE LIST

Michael P. Nolin
Commissioner
Department of Environmental Services
PO Box 95
Concord, NH 03302-0095

Anthony P. Giunta, P.G.
Director
Waste Management Division
Department of Environmental Services
PO Box 95
Concord, NH 03302-0095

Jennifer Patterson, Esq.
Senior Assistant Attorney General
Department of Justice
33 Capitol Street
Concord, NH 03301
F: (603) 223-6267
E: jennifer.patterson@doj.nh.gov

John E. Friberg, Jr., Esq.
Nixon Peabody, LLP
889 Elm Street
Manchester, NH 03101
F: (866) 947-0921
E: jfriberg@nixonpeabody.com

Barry Needleman, Esq.
McLane, Graf, Raulerson & Middleton, P.A.
15 North Main Street
Concord, NH 03301-4945
F: (603) 230-4448
E: barry.Needleman@mcclane.com

Jeffrey L. Roelofs, Esq.
Anderson & Kreiger, LLP
43 Thorndike Street
Cambridge, MA 02141
F: (617) 252-6899
E: JRoelofs@AndersonKreiger.com

Ronald J. Lajoie, Esq.
Wadleigh, Starr and Peters, PLLC
95 Market Street
Manchester, NH 03103
F: (603) 669-6018
E: RonLajoie@comcast.net

N. Jonathan Peress, Esq.
McLane, Graf, Raulerson & Middleton
15 North Main Street
Concord, NH 03301